THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1083 of 2005

14.12.2006

Between:

Talupula Penchalaiah, S/o.Pedda Penchalaiah
And others

… Petitioners

AND

The Mandal Revenue Officer, Dagadarthi Mandal, Nellore District
And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1083 of 2005

ORDER:

The petitioners who are ten in number filed the present writ petition seeking a writ of Mandamus declaring the action of the respondents in trying to dispossess them from the lands in their possession as illegal and arbitrary.

In brief, it is their case that the petitioners belong to SC/ST/BC community, who occupied poramboke land declared as surplus under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (the Land Reforms Act, for brevity) comprised in survey Nos.28, 29, 30, 53 and 61 situated at Ithampadu village H/o.Rangasamudram of Dagadarthi Mandal in Nellore District. They allege that they are regularly cultivating the lands by raising dry crops. They also made representation to the second respondent on 05.1.2005 requesting regularization of assignment of land to them. While the same is pending, respondents 1 and 3 taking steps to assign the land in favour of third parties and are trying to dispossess the petitioners.

This Court ordered *status quo* on 31.01.2005. The respondents have now filed counter affidavit along with the application for vacating the interim order. The writ petition is heard finally with the consent of the learned Counsel for both the parties and is being disposed of by this order.

In the counter affidavit, it is stated as follows.

> It is submitted that Smt.Modukuru Rajeswaramma, W/o.late Krishna Murthy is the declarant in C.C.No.1087/GNT/75 and she is declared as surplus landholder, vide proceedings in C.C.No1087/GNT/75 dated 24.12.2003 and it was ordered by the Land Reforms Tribunal and Revenue Divisional Officer, Guntur, for surrender of excess land Ac.21.18 cents in S.Nos.28, 29 and 30 of Ithampadu Village. The land is yet to be taken possession from the declarant. The question of allotment of land to the

landless poor persons shall arise only after taking possession of land from the declarant. In the meantime the petitioners herein have filed the writ petition questioning the action of the respondents in granting assignments is unlawful. On verification of the identity of the petitioners Sri Talupula Penchalaiah and 8 others, it is noticed that all of them are non residents except petitioner No.10. The petitioners have no right to claim assignment of the land as it is not taken over from the declarant so far. Moreover as on today the land is yet to be taken possession. After it is taken possession the land will be assigned only to the residents of village duly following the ratio of SC, ST, BC beneficiaries as per instructions under A.P.Land Reforms (COAH) Act. Hence the writ petition is filed without any cause of action and the same is premature and the petitioners 1 to 9 are non residents of the Village.

Though the counter affidavit is filed one year ago, no reply affidavit is filed. Therefore, this Court holds that the writ petition is filed on mere apprehension. Unless and until the ceiling surplus land is allotted to them regularly under Section 14 of the Land Reforms Act and Rule 10 of the Rules, the petitioners cannot claim assignment as of right. As the petitioners possession is not denied though by way of encroachment, they cannot be dispossessed unless due process of law is followed, if the respondents have already taken possession of the land from the declarant. If the land is still in possession of the declarant, the remedy of the petitioners lies against the declarant.

The writ petition, with the above observations and directions, is accordingly disposed of. No costs.

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December 14, 2006. (**V.V.S.RAO,J**)

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